

District filed its answer on June 10, 1991 and counter-claimed that Association's refusal to recommence negotiations was a violation of Article 4.5 of the parties' contract (CBA) thus triggering a violation of RSA 273-A:5 II (f). This was followed by a second ULP filed by the Association against the District on June 17, 1991 alleging violations of RSA 273-A:5 I (a), (c), (e), (g), (h) and (i). The District responded by filing its answer on June 20, 1991. The two matters were consolidated for hearing and heard by the Board on September 17, 1991.

The first of the two cases involves a claim by the Association that the District approved the multi-year (1989-92) CBA when it approved 1989-90 and 1990-91 funding at its adjourned meeting held on April 28, 1990. After voters cut \$611,000 from the District's budget on March 9, 1991, the District asked the Association to reopen negotiations on the already existing (1989-92) contract. The Association declined and pursued this case for a breach of contract (CBA) and failure to fund the upcoming year of the contract. In addition to its denials, the District claims Association's actions were a breach of its duty to reopen negotiations under Article 4.5 of the existing CBA.

The second case involved claims after the individual teacher contracts were issued in the spring of 1991 for the 1991-92 school year. Specifically, the ULP complained that longevity increases and step increases included in the 1989-92 CBA were not included in individual teacher contracts and that this conduct was coercive, bad faith bargaining and violative of the CBA. Our consolidated findings relative to both cases follow.

FINDINGS OF FACT

1. The Fall Mountain Regional School District is a "public employer" of teachers and other employees within the meaning of RSA 273-A:1 X.
2. The Fall Mountain Teachers Association, NEA-NH is the duly certified bargaining agent of teachers and other employees of the District.
3. The Association and the Board are parties to CBA which extends from July 1, 1989 until midnight on June 30, 1992, said agreement being signed December 21, 1990, and containing separate salary scales for school years 1989-90, 1990-91 and 1991-92 as well as longevity compensation for teachers with more than twenty years of service, i.e., at the 20, 25, and 30 year level.
4. The CBA contains a "Negotiation Procedures" article which provides, in pertinent part:

4.4....Any agreement reached which requires the expenditure of additional public funds

for its implementation shall not be binding on the Board, unless and until the necessary appropriations have been made by the Annual School District meeting....

4.5 If the additional funds for implementing the agreement reached by both parties as set forth in....Sec 4.4 are not approved at Annual School District Meeting or at any specially called School District Meeting in any one (1) fiscal year and/or after full compliance with....Section 4.1 through Section 4.4, negotiations shall be reopened for economic issues only. Mediation may be requested by either party.

5. The warrant for the District's Annual Meeting to be held on March 10, 1990, contained language pertaining to school years 1989-90 and 1990-91, to wit:

4. To see if the District will vote to accept and fund the economic portion of the teachers' fact finder's report submitted to the School District pursuant to the provisions of RSA 273-A, and to raise and appropriate the sum of FOUR HUNDRED EIGHTY-SEVEN THOUSAND, FIVE HUNDRED THIRTY-SIX DOLLARS (\$487,536.00) as a deficit appropriation to fund those portions of the report relating to the fiscal year 1989-90 and to raise and appropriate the amount of ONE MILLION, ONE HUNDRED EIGHTEEN THOUSAND, SIX HUNDRED AND NINETY-EIGHT DOLLARS (1,118,698.00) to fund that portion of the report relating to 1990-91 and to authorize Selectmen to pay over each town's share of the amount of the deficit appropriation prior to June 30, 1990; or take any other action in relation thereto. (Assn. Ex. No. 3)

Passage resulted in funding the first two years of the CBA.

6. The District's 1991 Annual Meeting was held on March 9, 1991. Voters at this meeting cut the District's budget by \$611,307 by a vote of 436 to 369. Minutes of that meeting (Assn. Ex. No. 6) reflect that the moderator "stated that the intent of this amendment to Article III is that the reduction in the budget would come from the third year of the teachers' contract."
7. On March 22, 1991 the District asked the Association

to reopen the "duly signed and executed" 1989-92 CBA. The Association declined, saying it had a CBA which "does not expire until the end of 1991-92 school year. The Association further claimed that the voter approval on or about April 28, 1990 of the first two years of the agreement which contained a Duration Clause (Article 22.1) until June 30, 1992 obligated expenditures for the third (1991-92) year of the contract.

8. Thereafter, for the 1991-92 school year the District maintained the compensation portions of the CBA as they had been for the 1990-91 school year, i.e., these benefits were "level funded" without increase or decrease for the 1991-92 school year.
9. Individual teacher contracts submitted to teachers for the 1991-92 school year did not reflect step increases or longevity increases found in the contract (Finding No. 3 above).

DECISION AND ORDER

There is no evidence that the District's voters, at the March 10, 1990, annual meeting, were "warned" by warrant article of expenditure for other than the 1989-90 and 1990-91 school years. Without that "warning," we cannot attribute a state of mind or intent to those voters to approve expenditures for other than those two years, i.e., no vote or approval for the 1991-92 school year. The duration clause of the 1989-92 CBA is insufficient to infuse financial vitality into the contract for all three of its years without such warning and specific voter approval. "Ratification by...the school district voters requires full knowledge of the financial terms of the collective bargaining agreement." Appeal of Sanborn Regional School Board, 133 N.H. 513, 520 (1990). In this case, the voters neither had the "full knowledge" nor knew the amount of money required to approve the third (1991-92) year of the CBA. As was the case in Salem Police Relief Assn., (Decision No. 92-08, January 22, 1992), the voters never approved the last year (1991-92) of the CBA by their actions on April 28, 1990. Under the same reasoning, the Association's alleged violations of RSA 273-A:5 I (a), (c), (g), (h) and (i) are dismissed.

The District's counter-claim relative to a violation of RSA 273-A:5 II (d) and (f) is sustained. Under the terms of Article 4.5 of their CBA, the parties specifically obligated themselves to reopen negotiations on economic issues if the additional funds for implementing the agreement were not approved.

The Association's second complaint involving steps and longevity increases has been addressed by this Board in Franklin School Board (Decision No. 92-53, March 19, 1992) to the extent both of these benefits would constitute "cost items" as defined therein and be subject to voter approval under RSA 273-A:3. In Newfound Area Teachers Assn. (Decision No. 91-109, December 16,

1991) we held that the employer "acted reasonably under the circumstances" when the CBA was about to expire in three months, negotiations had reached impasse, and individual contracts were issued on the salary levels for the prior year. We equate the reduced funding for the 1991-92 school year, resulting from actions of the district voters on March 9, 1991, to be equivalent to the about-to-expire contract situation in Newfound. Under the circumstances, the District's actions were reasonable when it used compensation figures from prior years when issuing 1991-92 individual contracts. The Association's second ULP alleging violations of RSA 273-A:5, I (a), (c), (e), (g), (h) and (i) is dismissed.

The Board directs:

1. The Association's ULP of May 24, 1991, is DISMISSED.
2. The Association's ULP of June 17, 1991, is DISMISSED.
3. That the Association violated its bargaining obligations under the CBA and RSA 273-A:3 when it declined to negotiate economic issues after voter action on March 9, 1991, thus committing an unfair labor practice under RSA 273-A:5 II (d) and (f).
4. That the parties commence negotiations forthwith.
5. That the parties keep this Board informed of their progress in the foregoing negotiations.

So ordered.

Signed this 22nd day of April, 1992.


EDWARD J. HASELTINE, Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Seymour Osman and Richard E. Molan present and voting.